WORLD TRADE ORGANIZATION

WT/DS155/10
31 AugN

I. Introduction

1. On 16 February 2001, the Dispute Settlement Body (the "DSB") adopted the Panel Report[1] in *Argentina – Measures Affecting the Export of Bovine Hides and the Import of Finished Leather* ("*Argentina – Hides and Leather*").[2] At the DSB meeting of 12 March 2001, Argentina informed the DSB, pursuant to Article 21.3 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (the "DSU"), that it would implement the recommendations and rulings of the DSB in this dispute and that it would require a "reasonable period of time" to do so, under the terms of Article 21.3 of the DSU.

2. In view of its inability to reach an agreement with Argentina on the period of time reasonably required for implementation of those recommendations and rulings, the European Communities requested tgi9s6oequeew6equeew6eqd ot ie" tot 0.000uiby10.86r bind10.86r.9(12 M6r arbis6oeqto)129(a9s6oeq(th

6. Argentina submits that the text of Article 21.3(c) of the DSU makes it clear that the 15-month

11. Argentina submits that the structure of its tax system justifies the requested time-limit. Under Argentina law, there is a set of regulations governing the conditions and time-limits for action by the national authorities in the domestic sphere. In the external sphere, there is a set of payment obligations and commitments assumed by Argentina that can only be honoured by strict compliance with the laws in force: the National Budget Law No. 25,401 of 12 December 2000 and the Fiscal Solvency Law No. 25,152 of 15 September 1999.

12. Argentina describes the process by which its annual budget is enacted as follows. In September of each year, the Executive submits to the Congress of the Nation its draft budget for the following financial year, containing estimated income and expenditure authorizations. First, it is examined by the Budget and Finance Committee of the Chamber of Deputies. Once that Committee has issued its opinion, the draft budget is examined by the Chamber, and upon approval by the Chamber of Deputies, it is passed on to the Budget and Finance Committee of the Senate before final transmission to the Senate. When it has been approved by both Chambers, it is promulgated by the Executive, which has partial veto authority. Once this process has been completed, the National Budget becomes a Law of the Nation, and can be amended only by another national law.

13. The text of the law is accompanied, *inter alia* , by a number of annexed tables providing a breakdown of the budgetary information (income, expenditure, financing, etc.) according to the organization of the national administration and its decentralized bodies. The tax revenue forecast is broken down according to the different taxes (IG, IVA, Personal Property Tax, etc.) and set out in detail in the Executive's annual letter of submission to the National Congress.

14. The projected amounts are then incorporated in the final estimate of income that is ultimately approved by Congress. The specification of these amounts, once they are included in the budget, forms part of the Law and make up the estimate of income for the entire financial year; in other words, they can only be amended by another law, since any change would involve a consequential change in the expenditure/income equation and the deficit level already approved.

15. Argentina further explains that, at the same time, the tax system is tied to the Law on Fiscal Solvency which provides, *inter alia*, for the progressive reduction of the national public deficit with a view to balancing the budget by 2005. This Law establishes target deficit levels for each year, and any change in the deficit levels indicated would also require a legislative amendment. Because of the relationship between the Law on Fiscal Solvency and the Budget Law, estimated income and expenditure will have to be adjusted in order to reduce the deficit to attain the target prescribed. The procedure will have to be applied by law in each of the succeeding financial years until the process is completed in 2005.

Member may, in a particular case, face as it proceeds to implement the recommendations and rulings of the DSB."[6] In the present case, Argentina's economic interests as a developing country and its fiscal solvency are at stake. This is clearly reflected in the capital debt maturity schedule throughout the period requested as a reasonable period of time (up to 2005). Likewise, owing to the size of the debt involved, and in particular to the impact of any failure to comply with the IMF Agreement, Argentina would have great difficulty financing an increase in its budget deficit.

22. Argentina maintains that the impact of any change in the rates would be significant. The *retenciones* and *percepciones* are a fundamental element in maintaining an adequate tax collection level. Through this mechanism, $1,600 million were collected in 2000, i.e. more than 18 per cent of the total taxes collected in connection with foreign trade. During the same year, IVA and IG collected at customs accounted for more than 7 per cent and 6 per cent respectively of the total amount collected for each tax. To cushion the impact of this loss of revenue, a procedure involving progressive equalization sector by sector is necessary. Argentina's "interest" as a developing country, therefore, consists in avoiding an abrupt implementation without a transition period, in the space of a single financial year, that would jeopardize the objective of reducing the deficit.

23. Against the foregoing background, Argentina, requests that consideration be given to its "interest" in being granted a period of time that would enable it to implement the recommendations

system. The above actions will require, respectively, amending the existing *Resoluciones Generales* or adopting new ones.

26. The European Communities observes that the adoption or amendment of a *Resolución General*

"particular circumstances" mentioned in Article 21.3(c) of the DSU are those which can influence what the shortest period possible for implementation may be within the legal system of the implementing Member.

30. Referring to the award in *Canada – Patent Protection of Pharmaceutical Products* ("*Canada – Pharmaceutical Patents*"), the European Communities contends that such "particular circumstances" may include, for example: whether legislative or administrative measures are needed; the complexity of the measures to be adopted; and whether the procedural steps towards implementation, and their respective duration, are mandated by law or are discretionary.[9]

31. The European Communities maintains that the impact of the implementing measures on the domestic industry is not a relevant factor. As noted by the arbitrator in *Indonesia – Certain Measures Affecting the Automobile Industry* ("*Indonesia – Automobile Industry*"), "in virtually every case in which a measure has been found to be inconsistent with a Member's obligations under the GATT 1994 or any other covered agreement, and therefore must be brought into conformity with that agreement, some degree of adjustment by the domestic industry of the Member concerned will be necessary […] Structural adjustment to the withdrawal or the modification of an inconsistent measure, therefore, is not a 'particular circumstance' that can be taken into account in determining the reasonable period of time under Article 21.3(c)".[10]

32. Similarly, the mere fact that the required implementing measures may be controversial and likely to raise opposition domestically is also not a relevant factor. As the arbitrator in *Canada – Pharmaceutical Patents* noted, there is nothing in Article 21.3(c) to indicate that the supposed domestic contentiousness of a measure taken to comply with a WTO ruling should in any way be a factor to be considered in determining a 'reasonable period of time' for implementation.[11]

33. The European Communities argues that though in accordance with Article 21.2 of the DSU, when assessing the "reasonable period of time" the arbitrator must take into account the "interests" of Argentina as a developing country, this does not mean that the arbitrator must take into account "circumstances" which are "qualitatively different" from those that would be relevant for a developed country. Rather, the arbitrator must apply the same kind of criteria to developing as to developed countries, but bearing in mind the greater difficulties which might be encountered by Argentina as a developing country.

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[9]Award of the Arbitrator under Article 21.3(c) of the DSU, WT/DS114/13, 18 August 2000.

[10]Award of the Arbitrator under Article 21.3(c) of the DSU, WT/DS54/15, WT/DS55/14, WT/DS59/13, WT/DS64/12, 7 December 1998, para. 23.

[11]*Supra*, footnote 9.

34.

the measures already taken by Argentina to implement its obligations in respect of *Resolución* (ANA) No. 2235/96.[13]

39. Thus, the present arbitration relates only to the implementation of the DSB recommendations and rulings in respect of *Resoluciones Generales* Nos. 3431/91 and 3543/92.

40. It is useful to go back to basics and perhaps most basic of all considerations is the nature of the act(s) of compliance or implementation that a WTO Member like Argentina, which has engaged in dispute resolution proceedings, is obliged to carry out. Implementation, in essence, consists of bringing the measure held to be inconsistent with the obligations of the WTO Member concerned under particular provisions of a particular covered agreement, into conformity with those same provisions. Article 3.7 of the DSU stresses that "the *first objective* of the dispute settlement mechanism is usually to secure *withdrawal of the WTO-inconsistent measure*". (emphasis added) The DSU goes on to state that compensation may be resorted to only if "the immediate

46. Secondly, the economic and social consequences of which Argentina is apprehensive, have not been demonstrated to be causally linked to adoption of an appropriate amendatory *Resolución General* in the course of these arbitration proceedings.[16] At least one of the consequences Argentina is anxious about, the decline in revenue collected, is demonstrably *not* linked to an amendatory *Resolución General* that would, for instance, "equalize" downwards the advance or withholding tax rates on imports to the level imposed on internal sales. Since the *final* or true tax rates remain the same regardless of the level of *advance* or *withholding* rates, any decline in taxes actually collected will be directly attributable to the deficiencies of the revenue collection system in place and to the high levels of tax evasion said to be currently prevailing. Those deficiencies and levels of tax evasion have existed for some years now and certainly long before any amendatory *Resolución General* will have been adopted and put into effect.

47. A third consideration is that there is nothing to prevent Argentina from enacting new legislation or administrative regulations, at the same time that an amendatory *(e 3t)8olo)0(beecwou)2x g tax*

in conjunction with Article 21.3(c), account may appropriately be taken of the circumstance that the WTO Member which must comply with the DSB recommendations and rulings is a developing country confronted by severe economic and financial problems. That those problems in the case of Argentina are real is not disputed, although there may be debate as to whether Argentina's economy is "near collapse".

IV. The Award

52. Having regard to the written and oral submissions of the parties, the considerations indicated above and the circumstances constituting this case, my determination is that the reasonable period for Argentina to comply with the recommendations and rulings of the DSB in *Argentina – Hides and Leather* by withdrawing or appropriately amending its *Resoluciones Generales* (DGI) Nos. 3431/91 and 3543/92, or (should Argentina choose to "equalize upwards") its *Resoluciones Generales* Nos. 3337/91, 18/97 and 2784/84, is not more than twelve months and twelve days from 16 February 2001. This period will accordingly expire on 28 February 2002.

Signed in the original at Geneva this 15th day of August 2001 by:

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Florentino P. Feliciano
Arbitrator